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VIA U.S. MAIL AND FOIAonline.gov

Regional Freedom of Information Officer
U.S. EPA, Region 9
75 Hawthorne St. (ORC-1)
San Francisco, CA 94105

**Re: Freedom of Information Act Request re EPA's Review of the Navy's
Draft Radiological Data Evaluation Findings Report for Parcels B and G Soil
(September 2017), and *Draft Radiological Data Evaluation Findings Reports for*
Parcel E Soil (December 2017), Former Hunters Point Naval Shipyard ("HPNS").**

Dear Region 9 Freedom of Information Officer:

Pursuant to the provisions of the Freedom of Information Act ("FOIA") 5 U.S.C. § 552, *et seq.*, as amended, as implemented by EPA under 84 Fed. Reg. 30028-01 (June 26, 2019), I am submitting this request for copies of the documents identified below:

1. All records relating to EPA's evaluation (including but not limited to all materials, reports, data, assessments, memoranda, documents, native files, electronic files, plots/graphs/pictures, notes, and/or correspondence relied on, used to prepare, and/or otherwise related to the evaluation) of all building soil survey units in Parcel B, as part of the EPA's review of the Navy's *Draft Radiological Data Evaluation Findings Report for Parcels B and G Soil* (September 2017), concerning Tetra Tech EC, Inc.'s ("TtEC") remediation work at HPNS.
2. All records relating to EPA's evaluation (including but not limited to all materials, reports, data, assessments, memoranda, documents, native files, electronic files, plots/graphs/pictures, notes, and/or correspondence relied on, used to prepare, and/or otherwise related to the evaluation) of all survey units in Parcel E (including but not limited to building, trench, fill, excavated, or overburdened soil units), as part of the EPA's review of the Navy's *Draft Radiological Data Evaluation Findings Report for Parcel E Soil* (December 2017), concerning TtEC's remediation work at HPNS.
3. If EPA did not conduct an independent evaluation of the survey units described in Requests Nos. 1-2, please provide documentation demonstrating that no such evaluation was conducted.

I request that you conduct sufficient communications so as to ensure that: (a) the individuals or offices having the most expeditious access to the documents provide them as soon as possible; (b) all requested documents, to the extent they exist, are provided; and (c) where documents are held by two or more individuals or offices but one has drafts of such documents or one has

a copy of the subject documents with annotations by hand or otherwise, all such documents are provided.

I further request that, pursuant to 5 U.S.C. § 552(a)(3)(B),¹ your agency produce any responsive documents in the native electronic format in which each document was created. To the extent that your agency is unable to produce responsive documents in the requested format, I request that your agency confirm that the records do not exist in native format and produce the documents in the following format, listed in accordance with my preference: 1) PDF format; or 2) paper copy. These documents should be produced in a mutually agreeable, orderly fashion.

As you know, 5 U.S.C. § 552(a)(6)(A)(i) requires that your agency determine within 20 working days after receipt of this request whether the government will comply and immediately notify the undersigned of the agency's determination, the reasons therefor, and appeal rights in the event of an adverse determination.

The term "document" as used herein shall mean all of the following, without limitation and by way of description: (a) all printed materials of every kind whatsoever; (b) all handwritten materials of every kind whatsoever; (c) all materials in electronic media regardless of the forms of such media; (d) all drafts of subject documents; (e) all documents referenced in subject documents including those noted as exhibits or attachments as well as those referenced in the bodies of subject documents or in footnotes to subject documents; (f) all documents, otherwise identified, but containing marginal or other annotations handwritten or otherwise; (g) all documents in the form of transcripts of meetings and telephone conversations and memoranda of such meetings and telephone conversations, whether printed or hand-written; (h) backup copies, recoverable deleted files, and any other archived or discarded material that is among the foregoing; (i) all audio visual records of public meetings, which may be made by a DVD, compact disc, or other appropriate means; (j) all transcripts of public meetings; (k) to the extent not covered by the definitions in (a)-(j), all materials generated by or received by any government employee, consultant, or other person having any relationship to the government; and (l) to the extent not covered by the definitions in (a)-(j), all materials generated by any person not in the employ of the federal government, including but not limited to lawyers, state or local government officials of every level, other interested parties, and non-parties to any communications on any relevant subject.

To the extent that you determine that any subject document will not be disclosed because it meets any of the criteria in the FOIA for nondisclosure, you are requested to identify such documents in accordance with the requirements of *Vaughn v. Rosen*, 523 F.2d 1136 (D.C. Cir. 1975). See *Mead Data Central, Inc. v. Dept. of the Air Force*, 566 F.2d 242, 251 (D.C. Cir 1977) ("[W]hen an agency seeks to withhold information it must provide a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply."). Please note that the government has the burden of proving that the information you seek to

¹ 5 U.S.C. § 552(a)(3)(B) provides that: "In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in form or formats that are reproducible for purposes of this section."

withhold falls within the FOIA exemption you claim. *Lewis v. Internal Revenue Service*, 823 F.2d 375 (9th Cir. 1987).

Responsive documents are requested to be produced in their entirety, including all attachments, enclosures, and exhibits, as previously noted. In the event that it is determined that a document contains material or information which falls within statutory exemptions to mandatory disclosure, it is especially requested that such material or information be reviewed for possible discretionary disclosure. Similarly, in the event that it is determined that a document contains material or information which falls within the statutory exemptions to mandatory disclosure, it is expressly requested that, in accordance with the provisions of 5 U.S.C. § 552(b), any and all reasonably portions of such document be produced that can be segregated.

This request constitutes notice and demand for the production of the above described documents. As soon as any portion of this request becomes available, I would appreciate it if you would contact me as soon as possible to arrange for a mutually convenient time and location to inspect the records. It is further requested that, to the extent possible, documents be provided in accordance with this request on an incremental basis as soon as they become available. While the burden remains on the government to produce all documents within the required time period, I am willing to discuss and agree on reasonable means of production to facilitate government compliance with the law.

I will be responsible for the reasonable cost of locating and reproducing the requested documents to the extent required by your regulations. If such cost will exceed \$500, please contact me before incurring any additional cost.

Thank you for your prompt attention to this request.

Very truly yours,



Christopher A. Rheinheimer

CVR:ETM